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School Finance Litigation: McCleary v. State of  
Washington

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**Reporter's Verbatim Report of Proceedings, September 3, 2009,  
Volume IV, Session 1 of 4 [Pages 734-803] 07-2-02323-2**

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1

2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

3 IN AND FOR THE COUNTY OF KING

-----

4 MATHEW AND STEPHANIE McCLEARY on )  
 their own behalf and on behalf of )  
 5 KELSEY and CARTER McCLEARY, their )  
 two children in Washington's public) SUPREME COURT  
 6 schools; ROBERT AND PATTY VENEMA, )  
 on their own behalf and on behalf )  
 7 of HALIE AND ROBBIE VENEMA, their )  
 two children in Washington's public) NO. 84362-7  
 8 schools; and NETWORK FOR EXCELLENCE)  
 IN WASHINGTON SCHOOLS, ("NEWS"), a )  
 9 state-wide coalition of community )  
 groups, public school districts, )  
 10 and education organizations, )  
 PETITIONERS, ) CASE NO.  
 11 )  
 VERSUS ) 07-2-02323-2SEA  
 12 )  
 STATE OF WASHINGTON, )  
 13 RESPONDENT. )  
 -----

14 Proceedings Before Honorable JOHN P. ERLICK

15

KING COUNTY COURTHOUSE  
 16 SEATTLE, WASHINGTON

17

DATED: SEPTEMBER 3, 2009  
 18 Volume IV, Session 1 OF 4

19

A P P E A R A N C E S:

20

21 FOR THE PETITIONER:

22

BY: THOMAS F. AHEARNE, ESQ.,  
 23 CHRISTOPHER G. EMCH, ESQ.,  
 EDMUND ROBB, ESQ.

24

FOR THE RESPONDENT:

25

BY: WILLIAM G. CLARK, ESQ.,  
 CARRIE L. BASHAW, ESQ.

Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,



1

2

## P R O C E E D I N G S

3

4

(Open court.).

5

6

THE BAILIFF: All rise. The Supreme Court  
of the State of Washington in King County is now in  
session; Honorable John P. Erlick presiding.

8

9

THE COURT: Good morning. Please be  
seated.

10

11

12

13

We are on the record in the matter of  
McCleary, et al., versus The State of Washington, King  
County cause number 07-2-02323-2 SEA. All counsel are  
present for the fourth day of trial.

14

15

16

We are in the petitioner's case-in-chief.  
We have Mr. Emmil on the stand and I think that we are  
in direct examination still.

17

18

19

MR. AHEARNE: Yes, your Honor.

THE COURT: Any preliminary matters before  
we put Mr. Emmil back on the stand?

20

21

MR. AHEARNE: Not from the petitioner, your  
Honor.

22

23

24

25

THE COURT: Anything from the respondent?

MS. BASHAW: No, your Honor.

THE COURT: Mr. Emmil, if you would please  
retake the witness stand.

1 KENNETH EMMIL,

2 Having been previously sworn,

3 Testified as follows:

4

5 THE COURT: Good morning.

6 You may be seated and I will remind you

7 that you remain under oath from your testimony

8 yesterday.

9 THE WITNESS: All right. Thank you.

10 THE COURT: Mr. Ahearne.

11 DIRECT EXAMINATION

12

13 BY MR. AHEARNE:

14 Q. Good morning.

15 A. Good morning.

16 Q. We might as well get this out of the way. I

17 notice that you have haven't shaved.

18 THE WITNESS: A apologize, your Honor, I

19 had a long morning this morning.

20 BY MR. AHEARNE:

21 Q. Why was that?

22 A. I -- had a Colville principal call me this

23 morning about -- Elementary Principal this morning

24 about 4:30 or a quarter to 5 o'clock this morning,

25 hasn't slept.

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1           She is trying to figure out to cram too many  
2   kindergarten kids in too few classes.

3       Q.   What happened to to cause that?

4       A.   They did kindergarten enrollment yesterday at  
5   the school over there. They have six too many  
6   kindergarten for the classes that we have.

7       Q.   Is that something that you knew about ahead of  
8   time?

9       A.   No. We tried to have as few classes as  
10   possible. So we had classes full and every one and  
11   six more kids came in and it has to do with the  
12   economy. People are moving closer to the services in  
13   town.

14           We have six more kids than we expected. We have  
15   been trying to figure out how to try to do something  
16   about finding somebody else to teach a kindergarten  
17   class.

18       Q.   How are you going to do that?

19       A.   Well, we have to have a teacher for them. We  
20   are going to hire a teacher and open a position today,  
21   I think.

22       Q.   Where are you going to get the money to do  
23   that?

24       A.   Well, we are going to take it from something  
25   else. But we are going to, you know -- always talking

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1 about, I think that I was talking about levies are  
2 hard over there because of the community. It is hard  
3 to pass them.

4 It is hard on the levy here to cut something  
5 that is voted on by the people to be able to bring a  
6 teacher in, you know. So we are -- I mean -- we are  
7 going to, like I said yesterday about triage. We are  
8 going to do triage again and kill another something  
9 for another group of kids some place else that is less  
10 important than the kindergarteners.

11 Q. When we finished up yesterday, we were talking  
12 about the report cards State issues. Do you remember  
13 that?

14 A. No, but -- sorry.

15 Q. Who is the largest employer in your area?

16 A. We are.

17 Q. Are you familiar with the needs of other  
18 employers in your area?

19 A. Yes, I believe so.

20 Q. Is that from your rotary and your Kiwanis and  
21 your Chamber, and et cetera?

22 A. Yes.

23 Q. Can a kid, who drops off out of high school,  
24 get a living wage job in your area?

25 A. Who drops out of high school? No, I don't

1 believe so.

2 Q. If I look at the report card that is the State  
3 issues, you have a lower percentage of kids in your  
4 high school fail to graduate than other high schools.

5 Doesn't that mean that you are doing relatively  
6 well?

7 A. Relatively well?

8 Q. Ah-hum.

9 A. Because we have less kids, who are dropping out  
10 than other people?

11 That just means to me that our house is burning  
12 down slower than everybody else's house is burning  
13 down.

14 I mean, I am supposed to be happy about that?

15 Q. Is that acceptable to you as a superintendent?

16 A. No, I don't want my house to burn down.  
17 Regardless of how fast it burns down, I don't want it  
18 to burn down.

19 Q. If I could ask you to look at Exhibit 422,  
20 please. I have to grab it first.

21 A. Can interrupt for a second?

22 Q. Sure.

23 A. I can do that? I just need to know, if I get  
24 this off my mind, when a break is going to be, so I  
25 can go take care of some things that I need to do.

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1           What time is the timeframe?

2           THE COURT: 10:30.

3           THE WITNESS: 10:30?

4           THE COURT: Does that work for you?

5           THE WITNESS: That would help, yes, 10:30.

6           MR. AHEARNE: So the record is clear the  
7   personal things or the school situation?

8           THE WITNESS: I have to call my principal  
9   this morning sometime. I just didn't know what time  
10   to do it.

11           I just want to focus on what I am doing  
12   now.

13           THE COURT: All right.

14           MR. AHEARNE: Is 10:30 all right?

15           THE WITNESS: 10:30 is all right.

16           THE COURT: We will take a 15-minute recess  
17   at 10:30 recess for 15 minutes and an hour and a half  
18   for lunch at 12:00.

19           If there is some circumstances that you  
20   need to accommodate, we can shorten the lunch recess  
21   and shorten the morning recess.

22           THE WITNESS: 15 minutes might not be long  
23   enough, I don't know.

24           THE COURT: How long do you think that you  
25   would need?

1 THE WITNESS: Half an hour would be great.

2 MR. AHEARNE: Your Honor, my suggestion,  
3 your Honor, could we let's play it by ear until we get  
4 to 10:30 and see where we are, I am hopeful to be done  
5 in the next 20 minutes.

6 THE COURT: Let's see where we are then,  
7 very good.

8 MR. AHEARNE: I will try to rush through  
9 this.

10 THE COURT: I want to make sure that we  
11 have a good record. And I want to make sure that  
12 Mr. Emmil's issues are addressed so that he is not  
13 distracted.

14 BY MR. AHEARNE:

15 Q. Do I have your attention until 10:30?

16 A. Yes, I am good. Sorry.

17 Q. Exhibit 422 is in front of you, all right?

18 A. Yes.

19 Q. Also, I would like to put in front of you  
20 Exhibit 646 and 651.

21 A. Right.

22 THE COURT: Counsel, I am sorry, I wasn't  
23 tracking, which --

24 MR. AHEARNE: Exhibit 646 and Exhibit 651.

25 THE COURT: Are those exhibits or --

1 MR. AHEARNE: Those are exhibits.

2 When I mentioned tabs, I am referring to  
3 the tabs that are in the exhibit notebook.

4 THE COURT: All right. We are looking at  
5 three exhibits?

6 MR. AHEARNE: We are looking at three  
7 exhibits. It is just so your Honor knows, it is a  
8 drill that we went through Chimacum, the interrogatory  
9 answer then the matrix that the State did and then we  
10 are going back to the F-196.

11 THE COURT: Very good, thank you, counsel.

12 THE WITNESS: What are we starting with?

13 BY MR. AHEARNE:

14 Q. Exhibit 646, if you would look at that, please?

15 A. Yes.

16 Q. On the second page, you see under the "A" it  
17 says:

18 "Please state the dollar amount that the State  
19 determined the cost to provide constitutional  
20 required basic education to every child residing  
21 within that district and that the single school  
22 years. "

23 A. Yes.

24 Q. Do you see that now?

25 A. Yes.

1       Q. If you could turn to Exhibit 651, please, which  
2       is the matrix that the State provided as the answer to  
3       that interrogatory, Exhibit 651 in front of you?

4       A. I am sorry. Could I back up for a second.  
5       This is the -- what? I am looking at -- respondent  
6       answers to responses --

7       Q. Right.

8       A. Okay, this is the lawsuit --

9       Q. Right. If you look at Exhibit 651, please,  
10      that is the tab.

11      A. Got it.

12      Q. Do you have the matrix in front of you, the  
13      upper left-hand corner says "Colville School District  
14      Basic Education By School Year," do you see that?

15      A. Yes.

16      Q. Then there is the lines, there is line 13,  
17      says:

18               "Basic Education portion, line 13, subtotal  
19      Special Ed, 221, sub total, 29 subtotal  
20      transportation?"

21               Do you see those?

22      A. Yes, forgive me. I forgot my glasses this  
23      morning. I am struggling an it little bit.

24      Q. All right.

25      A. Line 13, all right. I see that, yes.

1 Q. Are those the Program Funding Formula amounts  
2 that you were talking about earlier; those lines?

3 A. Right; the days, yes, absolutely.

4 Q. Line 33, where it says "total basic education  
5 allocation," do you see that?

6 A. Yes.

7 Q. Do you see under the 2007-2008 year, there is a  
8 \$12,654,116, about \$12.7 million figure; do you see  
9 that?

10 A. Yes.

11 Q. Does \$12.7 million provide Colville School  
12 District resources to equip all children with the  
13 knowledge and the skills that are specified in the  
14 State Essential Academic Learning Requirements?

15 A. That is not even close.

16 Q. Does that \$12.7 million figure provide enough  
17 resources for your School District to equip all  
18 children residing within your district with the  
19 knowledge and the skills that are identified in the  
20 four paragraphs of House Bill 1209?

21 A. No; it doesn't.

22 Q. Are you aware of any other place where the  
23 State has specified that the kinds of knowledge and  
24 the skills that kids need?

25 A. Well, there are the -- I think that it is

1 further on in that document. There is all kinds of  
2 places where it talks about it.

3 There is the State's Supreme Court is that --  
4 where the judge said that it extends to how -- excuse  
5 me, adults will be able to work in our democracy and  
6 how they will be able to be a part of their citizenry.

7 I am not sure of the exact words, but it talks  
8 about them being able to compete in the work world and  
9 all of those things. So there is that.

10 What else is there?

11 There is always stuff coming out about it; what  
12 schools are supposed to get done with students.

13 Q. If I could over-burden you with tons of stuff,  
14 handing you Exhibit 2. Are you able to read the  
15 paragraph that is in Exhibit 2, there?

16 A. Sorry. Right. In this is 1978, right? This  
17 was 1978?

18 Q. If you look at the upper left-hand corner, that  
19 is what it says.

20 A. Right; 1978.

21 Right, the reason that I brought this up is  
22 because I had a great conversation with a community  
23 member the other day about the fact that sometimes --  
24 us -- and I hate to refer to myself as an intellectual  
25 now, because I never really did.

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1           But I guess with the doctorate I have to now,  
2   but sometimes us folks who are educated forget that  
3   even the -- you know, the -- the building ironworker,  
4   you know, that I used to be, has to be able to read  
5   their pamphlet for their union pamphlet. They have to  
6   be able to vote on their local initiatives, or levies,  
7   or ballots, or whatever. They have to be able to do  
8   that.

9           Even those folks, who aren't going to go off to  
10   a four-year university need to be able to have the  
11   skills to participate in the local government, or even  
12   their club or their -- whatever.

13           Because I had a guy tell me, you know, "why does  
14   my kid need to finish school, if he is going to come  
15   and weld in my shop?"

16           Q. Does the paragraph that you just read in  
17   Exhibit 2, does that have any significance to you as a  
18   superintendent of the School District in our State?

19           A. Well, I think that based on what I just said,  
20   yes, it does.

21           Q. What is that significance?

22           Does this have anything to do with the knowledge  
23   and the skills that you believe that the State  
24   requires kids to have?

25           A. Well, it has to do with that kid, whose dad

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1 doesn't think that he needs to finish school, yes.

2 Q. Does the \$12.7 million amount that is on the  
3 specified for the 2007-2008 school year on Exhibit  
4 651, does that provide your School District with  
5 enough resources to equip all children residing within  
6 your district with the knowledge and the skills that  
7 are described in Trial Exhibit 2?

8 A. No.

9 Q. Does that \$12.7 million amount provide your  
10 district -- the resources to provide all children  
11 residing in your district the realistic, or effective  
12 opportunity to learn the knowledge and the skills that  
13 are specified in the State's Essential Academic  
14 Learning Requirements?

15 A. In this, no, they don't.

16 Q. Does it provide your district of the level  
17 resources that they need to provide a realistic or  
18 effective opportunity for all children to learn the  
19 knowledge and the skills in the four numbered  
20 paragraphs on the top of House Bill 1209?

21 A. No.

22 Q. Does it provide the district the level of  
23 resources that they need to equip or provide all  
24 children the realistic or effective opportunity to  
25 learn the knowledge and the skills that are described

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1 in Exhibit 2?

2 A. No.

3 Q. Why do you say that?

4 A. It doesn't provide enough for me to open my  
5 school doors.

6 Q. The 12.7 here won't let you open your doors?

7 A. Not with the electricity and water and --  
8 anything for anybody to use, no.

9 Q. If I can ask you to look at bottom line that  
10 has that 12.7, I am rounding up in favor of the State,  
11 12.7 for the 2007-2008 school year?

12 A. Am I done with this?

13 Q. No.

14 A. We are looking at this now, this.

15 Q. This Exhibit 651?

16 A. Exhibit 651, yes, sorry.

17 Q. If you look at the -- where that \$12.7 million  
18 comes from the actually 12,654,000 is the basic  
19 education allocation in 2007-2008 estimate, do you see  
20 that?

21 A. Yes.

22 Q. Do you see that there are also numbers for 06,  
23 07, 506, 405, do you see those going on to --

24 A. Yes.

25 Q. If I asked you the same series of questions

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1 about whether that amount provided your district the  
2 level of resources that they need to either equip kids  
3 with the State standards, or give them a realistic  
4 opportunity to learn State standards, would your  
5 answers be the same?

6 A. Yes.

7 Actually, it is getting worse every year. Every  
8 year it gets harder and harder every year. I don't  
9 know how to explain this, maybe, but -- as odd as it  
10 sounds, the way that our State -- and the way that our  
11 State does business, every time that the State gives  
12 us more money, it becomes harder for me to run my  
13 School District, because the State gives me more money  
14 and says "this is what you have to do with it. You  
15 have to do this with it," but everything that they  
16 tell me that I have to do with it, costs more than  
17 what they give me.

18 Q. Could you give an example?

19 A. Well, they give us NERCs, non-employee related  
20 costs, right?

21 In our district that is around \$1.1 million  
22 typically. It will go up this year because the number  
23 of kids went up this year, but that is a pretty good  
24 average, \$1.1 million.

25 Just the electricity, just the Vista bill is

1 almost \$500,000, insurance is \$100,000.

2 The State mandated data system that we have is  
3 \$100,000.

4 You add water to that -- our local water bill to  
5 that. You add the contracts that we have to have in  
6 order to maintain the systems in our buildings, 1.1 is  
7 gone. That is gone. We haven't bought a book yet, or  
8 a computer, a pencil. We are out of money.

9 So I looked at it five years ago, when I came  
10 in, and we had about 10 percent of our budget was for  
11 operating costs, that I felt that we could use for  
12 operating costs.

13 It is eight this year. In 10 years if it keeps  
14 going like it is going, in 10 years, the costs go up  
15 for things.

16 The amount of money that I have to pull away  
17 from the operating costs -- in order to cover the  
18 kindergarten teacher, or something else goes up -- 10  
19 years, I won't have an operating budget.

20 I will be using NERCs for the other things that  
21 are mandated that I -- I can't use for, you know -- it  
22 is a downward spiraling cycle that is -- scares me.

23 Q. Do you know, turning to the Program Funding  
24 Formulas, part of the Program Funding Formula involves  
25 money for teacher salaries; is that correct?

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1       A. Right. We have a form, there is a formula for  
2 teacher salaries, yes.

3       Q. Yesterday you testified that Colville pays the  
4 teachers the salary that is on the program funding  
5 formula salary schedule; correct?

6       A. Yes, on the Leap Schedule. It is called a Leap  
7 Schedule. I don't know what LEAP Schedule stands for,  
8 but that is what the State calls it, the LEAP Salary  
9 Schedule.

10             The State says this year this much -- this much  
11 experience this much education should make that is  
12 what we pay.

13       Q. So Colville actually pays teachers the amount  
14 that is on the program funding formula salary  
15 schedule?

16       A. Right.

17       Q. Why doesn't Colville -- or why doesn't Colville  
18 pay them any more?

19       A. Like I said --

20             MS. BASHAW: Objection, asked and answered.  
21 We went through this yesterday.

22             MR. AHEARNE: I am trying to go in logical  
23 order. I am going A, B, D, E.

24             THE COURT: I understand.

25             MR. AHEARNE: I want a C in there.

1                   THE COURT: I think that counsel's  
2     objection is well taken. We did address this  
3     yesterday. I recall it.

4                   MR. AHEARNE: Your Honor, in my sole  
5     purpose --

6                   THE COURT: You want it to make it part of  
7     your so LOEJ gist SIM\*\*, go ahead.

8     BY MR. AHEARNE:

9         Q. Why does Colville not pay -- try to pay,  
10     something that is more than on the Formula Funding  
11     Program Schedule?

12        A. I will make it brief, because we don't have to.

13        Q. I am sorry.

14        A. We don't have to.

15        Q. It is a competitive wage in your area?

16        A. Yes, we don't -- the teachers in our area will  
17     work for what we pay them.

18        Q. The Program Funding Formula does that pay for  
19     all of your teachers?

20        A. No, absolutely not, no.

21        Q. Does it pay for certain number of your  
22     teachers?

23        A. It pays for about 90 out of 117 -- 93 out of a  
24     117.

25        Q. You do pay the exact amount that is on the

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1     Formula Funding Program salary scheduled for your  
2     teachers?

3         A.   Yes.

4         Q.   The Formula Funding Program pays for 90 of your  
5     teachers?

6         A.   93 or something, yes.

7         Q.   So does the State fund the salary of those 93  
8     teachers?

9         A.   No.   No.

10        Q.   How does that work?   Why not?

11        A.   Well, first of all, the ones that are -- that  
12     say doesn't pay are funded by other programs.

13        Q.   Like?

14        A.   So it is not like I am using State money to pay  
15     teachers who aren't funded by the State, all right.  
16     They are funded by federal programs and whatever out  
17     there; right.   So I don't want it to be misleading.

18           However, the formula that the State uses to pay  
19     me to pay my teachers, is short by about \$90,000.

20        Q.   Could you explain to the Court how much short?

21        A.   Well --

22        Q.   How is it short?

23        A.   If I explain like this, what happens, your  
24     Honor, is that the State takes all of my teachers  
25     which is 120, 123, 127 -- depending upon the year, it

1 is right around 120.

2 They take this 120 teachers and they figure out  
3 what is called a mix factor for those teachers. They  
4 say, okay, the average experience and education level  
5 for these teachers is a 1.65; right?

6 Because I have my regular education teachers  
7 that the State funds, then I have the other teachers  
8 that are funded by other programs.

9 Then what the State does is they take this 1.65  
10 and then they pay me for my regular education teachers  
11 at 1.65.

12 But when I take my regular education teachers  
13 and I figure out the mix factor for them, it is 1.75;  
14 because the teachers that I have that are funded in  
15 other programs are my young inexperienced, low  
16 educated folks.

17 So they take all of my teachers, create an  
18 average, pay me that for my experience and educated  
19 teachers, that I have to pay more.

20 It comes out to about \$90,000 difference that I  
21 have to figure out a way to pay \$90,000 what the State  
22 requires me to pay them.

23 They don't give me that \$90,000. I am pull it  
24 from NERCs, or from the local money, or from some  
25 place else. It is very frustrating.

1       Q. If I could ask you to turn to Trial Exhibit  
2       422, the F-196 again, turn to page 3, please.

3               When I say page 3, I am looking at the upper  
4       right-hand corner that is in all caps on the page,  
5       "PAGE: 3."

6       A. All right; statement of the revenue  
7       expenditures?

8       Q. Right.

9               Yes. If you go then under "Revenues for State  
10      Total," go all over way over to the right \$15.3  
11      million; is that correct?

12      A. Yes.

13      Q. So in addition to -- we have the in the prior  
14      exhibit, we have the 12.7 and then the State's total  
15      amount, though, is the \$15.3 million; is that correct?

16      A. Right; when you add State special purpose money  
17      to that, yes.

18      Q. So is this State Special Purpose Money, money  
19      that you can count on year after year?

20      A. No, that changes. That changes all of the  
21      time.

22      Q. Can you give some examples?

23      A. Well, the -- it is not based on the same kinds  
24      of formulas. So it fluctuates. It is hard to  
25      explain, really. It fluctuates up and down and -- you

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1 know -- it is based on a fulfilling a need, I guess.

2 Q. Could you give an example of some line that has  
3 gone up or down?

4 A. Here is an example, it is based on fulfilling a  
5 need.

6 I have a student, who comes in and State Special  
7 Education money, right. Comes in and they say, "by  
8 law you have to take care of this student. We are  
9 going to give you \$8,000 to do that, to take care of  
10 that student" -- because it is a per kid formula,  
11 right?

12 Well, this kid, who we are taking care of, dad  
13 moved to Colville from northern California, right.

14 His dad moves from the northern California to  
15 Colville, moves into our district. We get information  
16 from the School District in Northern California that  
17 says, "by the way this \$85,000 bill for this  
18 residential treatment for this kid in northern  
19 California is now yours."

20 Because by law, I have to serve every person,  
21 who lives within my School District. I have never  
22 seen the kid, never been to Colville, never been  
23 assessed by any of my staff, was assessed by a School  
24 District in Northern California.

25 Dad moves to Colville, the bill becomes mine. I

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1 get 8,000 for that kid and I pay \$85,000 for the kid.

2 Where does the other -- if I don't pay \$85,000 for the  
3 kid, I am in court being sued by dad.

4 What do I have the funds to hire an attorney to  
5 protect me in that situation?

6 I don't. I pay the \$85,000. I cut something  
7 else that is --

8 Q. You can say \$85,000, do you mean \$85,000 or  
9 \$8,500?

10 A. \$85,000, the residential treatment for a  
11 mentally disabled student in a home in Northern  
12 California is expensive.

13 Q. I will confess you have lost me. Why do you  
14 have to pay for a kid, who is in northern California?

15 A. Because his dad moved into Colville School  
16 District. So that student is now a resident of  
17 Colville School District.

18 That is the -- you know what -- you know, I  
19 wonder if northern California rented the guy a house  
20 in the Colville School districts. It makes me think  
21 about it.

22 Q. What other kinds of things are in this  
23 additional money that -- doing the math really  
24 quickly, 12.7 --

25 A. State special purpose stuff?

1 Q. Right.

2 A. State special purpose is --

3 Q. Is the 728 money be in there?

4 A. The 728 is in that, yes.

5 Q. Is that something that you can count on year  
6 after year?

7 A. Absolutely not.

8 In fact, my mistake, but, we used to have  
9 full-time than kindergarten on our levy. Our levy  
10 failed.

11 So the board said to me, "listen, we have to  
12 find a more stable funding source for our levy."

13 Q. For the levy or for the older kid?

14 A. Excuse me, for the full-time kindergarten  
15 because the levy is not a -- you can't count on it.  
16 Full-time kindergarten is too important. You need to  
17 find a stable funding source.

18 So, I mean, this is my bad, your Honor, but I  
19 said, "okay we will put on 728 because that is stable,  
20 you know."

21 That was good. Right, 728 goes away the very  
22 next year. Now I am scrambling to figure out a way to  
23 put full-time -- my board doesn't necessarily care.

24 They say, "full-time kindergarten is too  
25 important for our kids. Figure out a way to make it

1     happen."

2             It just means going back and taking away  
3     something else somewhere else to make it happen  
4     because that is what they want.

5         Q.   That is this, the extra money that the State  
6     provides is not part of what they say is basic  
7     education. Does that include any money for  
8     construction at all?

9         A.   No.

10        Q.   If, doesn't the State fund School Construction  
11     and Revenue -- or school construction and renovation  
12     through separate capital budgets?

13        A.   No.

14        Q.   Does the State traditional funded new and  
15     renovated school district facilities in tandem with  
16     local funding?

17        A.   In tandem, yes. If you pass a bond, they will  
18     give you matching money, yes.

19        Q.   So, why don't you just patch -- pass a bond to  
20     get the matching money?

21        A.   I am sorry, I just don't -- I guess -- you know  
22     I grew, up in Snohomish we pass the \$24 million  
23     athletic bond to build fields.

24             I move to Colville and try to pass a 17 cents  
25     per thousand bond to fix the junior high roof, 17

1 cents per thousand, it would have been -- 6 pack a  
2 beer a week for people -- it failed miserably.

3 People in our area, places like our area are  
4 not, are against tax, man. Any tax, they are angry.  
5 They are all about the government.

6 The only place that people can say no to the  
7 government is on the school bond or a school levy.  
8 They exercise that right. That is the only place that  
9 they can say no to the taxes is when the school comes  
10 and asks for it.

11 You know, I mean, I have heard people -- friends  
12 who live over hear say, "well, you guys run a levy? I  
13 think so."

14 I am thinking, you don't even -- you work for  
15 the district you don't even know if your district  
16 grant a levy this year.

17 In my community, when you run a levy, it is a  
18 civil war. It is family against family and  
19 neighborhood against neighborhood. It is an ugly,  
20 horrible, mean, nasty -- I get threats, you know,  
21 about it.

22 I mean, my wife doesn't go shopping at the store  
23 because she is a the superintendent's wife. I drive  
24 an old beater jeep.

25 You know why?

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1 Q. Why?

2 A. Because I can't pass a levy if I buy a new car,  
3 that is why. It is hard.

4 Q. Some people would say with respect to the local  
5 levies, that it is an opportunity for local  
6 communities to invest and promotes support for local  
7 public schools.

8 Is that true in Colville?

9 A. No, that is a horrible, sick, nasty joke.

10 Q. Now, I would like to turn to one of the  
11 pictures we went through in Exhibit 1618. It has got  
12 a number on the bottom right-hand corner of LON COL  
13 034.

14 A. Do I need this?

15 Q. You will.

16 A. All right.

17 Q. Could you identify what that building is?

18 A. That is Colville High School.

19 Q. How do Colville pay for that high school?

20 A. Bond, that we passed in 1992 -- 1991, think  
21 that I we passed it in 1991.

22 Q. 1991?

23 A. 1991.

24 Q. What is to the left on this picture?

25 Is that another building, in the open space?

1       A.  No.

2               That is open space, when we built the building,  
3  we designed it so that we could extend the hallway out  
4  so we could add classrooms.

5               If we needed any classrooms, we could add --  
6  eventually the board wants to get to a K-12 campus,  
7  because it is way more efficient and effective with  
8  having one, you know, one library, one -- you know, a  
9  kitchen, that kind of a stuff.  We wanted to extend  
10 that out.

11       Q.  If I understood you correctly, it would be a  
12 lot of your district to operate a lot more efficiently  
13 if you extended this building?

14       A.  Right.  We have tried to do that, yes.

15       Q.  Why don't you do it?

16       A.  You have to pass a bond to do that.  There is  
17 no way we will pass a bond to do that.

18       Q.  The State, will the State provide you money or  
19 even matching money for that construction, if you  
20 don't pass the bond?

21       A.  No, they don't.

22       Q.  If I could ask you to go back to the F-196,  
23 please.  Do you have that in front of you?

24       A.  Yes.

25       Q.  If I could ask you to look at the Revenue

1 Federal Total on that same -- we are still on that  
2 page 3.

3 A. All right: "Federal Total, 1.5"?

4 THE COURT: Sorry, counsel, once again,  
5 what -- is this Exhibit 422?

6 MR. AHEARNE: Exhibit 422, yes, your Honor,  
7 I am sorry.

8 A. 3, page 3.

9 Q. The federal money that you get then is  
10 additional \$1.5 million; is that correct?

11 A. Yes.

12 Q. So, that would raise the total -- I will  
13 confess, I had a cheat sheet here. It should raise  
14 the total then to \$16.8 million of all of the State  
15 money and the federal money.

16 Do you see that?

17 A. Yes.

18 Q. Now, that additional federal money of the \$1.5,  
19 is that money that you can rely on or count on year  
20 after year?

21 A. I know that I will get some, but I don't know  
22 what it will be or how I will have to use it.

23 Q. When you say how you have to use it, are there  
24 any restrictions on the money that you get from the  
25 federal government?



1       A. Massive amounts of the restrictions, yes.

2       Q. So are you allowed to use that money in the way  
3 that you think would best serve your students?

4       A. The way that I think would best serve the  
5 students?

6           All my students, no, but because there is  
7 restrictions about how it has to be used to serve  
8 certain student. But the tough part about this is  
9 that it is not enough so I have to use regular  
10 education money to cover what it doesn't do.

11           Then, because of the way that the federal  
12 requirements are -- the federal requirements are that  
13 they have a thing called maintenance of effort, where  
14 if I put regular education money into that and use  
15 that to supplement what I am doing for those Special  
16 Ed students -- because I don't have enough in there --  
17 then the next year I have to spend the exact same  
18 amount of money.

19           I know that other districts, you know, will not  
20 do that, because it is a trap. It is a trap for us,  
21 because once we use that money in that program, the  
22 federal law requires us to continue to use the same  
23 amount of money, even though that it is not funded by  
24 that program.

25           So it is really kind of a catch 22. If you get

1 to the place in the district where you have to, you  
2 absolutely have to use that money, you are trapped.  
3 You have to always use that money there.

4 Q. So looking at the F-196, the total that you get  
5 from the State, total, not just the 12.7 that the  
6 State has said that feels it is the constitutional  
7 duty, but all of the money, 15.3 plus the federal  
8 money that you just described that brings it up to the  
9 16.8.

10 Yet the actual costs of running the Colville  
11 School District that year was the 18.9, or you include  
12 ASB Fund, the \$19.4 million?

13 A. That is what we spent, yes.

14 Q. How do you fill this gap?

15 A. Well, when we are lucky, it is a levy. They  
16 put a levy in there. We get some local donations and  
17 some stuff like that, that is it.

18 Q. Are the levies something that you can, is the  
19 levy money that you can count on year after year?

20 A. Well, I have been there 20 years. I can tell  
21 you that just about every other levy fails, double  
22 fails.

23 You know, I don't think that I have -- the State  
24 allows you to run a levy twice. If you fail it the  
25 first time that, you can run it the second time.

1           Never do we -- only after we have had a double  
2   levy failure, and been without for a year and a half,  
3   do we pass the levy on the first time. But basically,  
4   every other levy fails in Colville.

5           So can we count on it? No.

6           Q. You are involved with the other districts on  
7   that 395 corridor as well?

8           A. Right.

9           Q. Is the situation that you described in  
10   Colville, is it your understanding that that is  
11   atypical?

12          A. Well --

13                   MS. BASHAW: Objection; lack of foundation,  
14   calls for speculation.

15                   THE COURT: Sustained. Please lay a  
16   foundation, counsel.

17   BY MR. AHEARNE:

18          Q. What kind of organizations are you involved in  
19   with respect to your peers, as superintendent of the  
20   school districts in your area?

21          A. WASA, new WASA, WASDA.

22          Q. Are those the organizations that you described  
23   yesterday?

24          A. Yes.

25          Q. As part of the work in the organizations, do

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1 you communicate with the other superintendents from  
2 other districts?

3 A. Yes.

4 Q. Do you have an understanding of how their levy  
5 situation works in those other districts?

6 A. Yes.

7 Q. Based upon your understanding, do you think  
8 what you described that levy situation being in  
9 Colville is unusual for your area?

10 MS. BASHAW: Objection; calls for hearsay,  
11 lack of foundation.

12 THE COURT: Counsel, how do you get around  
13 the hearsay objection?

14 MR. AHEARNE: I am asking for his  
15 understanding based upon his work in these  
16 organizations with other superintendents.

17 If you take hearsay to be anything that you  
18 are understanding, that you get from anything that you  
19 hear and anything that you read, well, then,  
20 absolutely everything that I know is hearsay.

21 THE COURT: But you are not testifying on  
22 the stand.

23 MR. AHEARNE: All right.

24 But if anything that a witness knows from  
25 his conversations with his coworkers, his other people

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1     that he works with in the organization dedicated to a  
2     certain topic, such as the school districts and that  
3     395 corridor, everything that that witness reads with  
4     respect to School District Funding, et cetera, in the  
5     395 corridor, if that is then the understanding and  
6     the knowledge that he has from, that is all hearsay.

7                 Then anything virtually anything that a  
8     witness knows is hearsay.

9                 THE COURT: Well, that is proceeding is  
10    confusing a lay witness and an expert witness. An  
11    expert witness can rely on that information to provide  
12    an opinion.

13                That is the definition of hearsay, because  
14    there is no way for an opposing party to challenge  
15    that information, because the source of that  
16    information is not available. That is the definition  
17    of hearsay.

18                So this witness says "by way of an example,  
19    Spokane County's levies fail 63 percent of the time.  
20    I know that because I talked to the superintendent in  
21    Spokane School District," there is no way to impeach  
22    that information, because he is not the source of the  
23    information.

24                The superintendent of Spokane School  
25    Districts is; that is why the Hearsay Rule disallows

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1 the type of information, understandings.

2 If his understanding is from the third  
3 party of third-parties is offered for the truth of the  
4 matter asserted, which I believe that it is, then that  
5 is hearsay.

6 MR. AHEARNE: All right. In an interest of  
7 time let me try one other way, if it doesn't satisfy  
8 the objection, I will move on.

9 THE COURT: Unless you can cite to me an  
10 exception, but I think that it is a hearsay.

11 MR. AHEARNE: All right.

12 BY MR. AHEARNE:

13 Q. Do you, without telling me what the answer is,  
14 do you have an understanding of whether the levy  
15 situation that you described with respect to Colville  
16 is typical or not in your area?

17 Not telling me what the answer is but do you  
18 have an understanding?

19 A. Do I know for certain? Yes, I know for  
20 certain.

21 Q. What would you base that knowing for certain  
22 upon?

23 A. I have seen the levy results from the County.  
24 We share levy results on our County on the different  
25 precincts and what the vote total was on those

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1 documents from the County.

2 Q. The documents from the County, are you talking  
3 about the vote results released by the County on the  
4 public elections?

5 A. Yes, they are online.

6 MS. BASHAW: Objection, leading the witness.

7 THE COURT: Overruled, I will allow it.

8 BY MR. AHEARNE:

9 Q. Based on --

10 A. Does that mean that I answer the question?

11 Q. Based on that --

12 A. I am sorry.

13 Q. -- do you have an understanding one way or the  
14 other as to whether the situation described in  
15 Colville is typical or atypical in your area?

16 MS. BASHAW: Same objection, your Honor.

17 I still think that we are dealing with  
18 information that comes from hearsay.

19 THE COURT: The documents themselves that  
20 this witness would rely upon to reach that conclusion  
21 would be hearsay.

22 MR. AHEARNE: They are official government  
23 records of vote results.

24 THE COURT: The records may be admissible  
25 under the public records exception, but they haven't

1     been offered.

2                     This witness testifying about what public  
3     records say is hearsay.

4                     MR. AHEARNE: All right; your Honor, I will  
5     move on.

6                     THE COURT: Thank you, Mr. Ahearne.

7     BY MR. AHEARNE:

8         Q. Now, the levy, the local levy money that you  
9     have here, is that based on property taxes?

10        A. Right. That is a middle rate for property tax,  
11     yes.

12        Q. Are you allowed to tax the property within the  
13     Colville School District?

14        A. No. There are forest land that is government  
15     owned that we can't, we don't get to tax.

16        Q. Doesn't the federal government -- the federal  
17     government doesn't allow you to tax its federal forest  
18     land; correct?

19        A. Correct.

20        Q. Doesn't the federal government give you money  
21     to make up for all, or in whole or in part, or  
22     whatever, but some sort of make up money for the fact  
23     that you can't tax their federal land?

24        A. Yes, they do.

25        Q. So that that money you are able to, in essence,

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1 tax that federal land, because the federal government  
2 gives you a chunk of change for that land; correct?

3 A. We are not able to tax it. But they give us  
4 money in lieu of the taxes that we could have.

5 Q. So that does impact the amount in any way the  
6 amount of money that you are able to collect on your  
7 local levies?

8 A. Yes, it impacts it.

9 Q. How?

10 A. We can't collect that levy money.

11 Q. But the federal government provides you money?

12 A. Right, the federal gives it to us the State  
13 takes the exact amount of money away in our  
14 apportionment. It is a flow through thing.

15 The State takes -- the federal forest money  
16 flows through the State. The State knows how much  
17 money we are getting from the federal government for  
18 forest land.

19 Then the State takes the exact dollar amount  
20 away from the our school district for the money that  
21 they give us to our students. It ends up hurting us  
22 in the end, because we can't tax the land.

23 The federal government is making up for it. But  
24 the State is taking that exact amount of money away  
25 from us in what they give us for our students.

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1       Q. Now, can you fill in this gap between either  
2       the 12.7, 15.3 or 16.8 gap between the amount of money  
3       that you get from various government entities, and the  
4       actual costs of running your School District?

5               Can you get that from local fund raisers and  
6       things, PTA, et cetera?

7       A. No. It became clear in our community a long  
8       time ago that if you, that our local levy is the  
9       fund-raiser.

10              If we try to go out and fund raise in our  
11       community for the School District, people would say,  
12       "well, no, I gave at the fund-raiser. I am voting no  
13       on the levy."

14              So you can't do that. We can't fund raise, you  
15       know.

16              To be frank, you know, the levy that we run, the  
17       average in the State is like 23.5 percent levy. We  
18       run a 11.8, I think or 12 percent levy. That is the  
19       largest levy that we have ever passed.

20       Q. Doesn't the State allow you to run the larger  
21       levy?

22       A. Sure, they allow us to run a 24 percent levy.

23       Q. Why don't do you do that and pass that?

24       A. People would ever -- people would laugh at me  
25       if I ran a 24 percent levy in Colville. It would be a

1 big joke. They wouldn't -- I mean, it would be --  
2 unbelievable.

3 There is no way that we can, I mean. We ran the  
4 largest levy we felt like we could run and get people  
5 to support in our community. It is --

6 Q. That is the most recent one that you were  
7 talking about?

8 A. Yes.

9 With the -- with the record number of yes votes,  
10 which was about, we passed it by about 18 people, 18  
11 votes, I think.

12 But like our bond for our high school passed by  
13 like six or seven votes after about seven times. I  
14 think that we just beat them into submission and they  
15 got tired of us, so they passed it.

16 Q. Talk about beating things into submission, I  
17 will try to move on here.

18 This gap that you have described between the  
19 actual costs of running the Colville School District  
20 and the amount of fund that you get from either the  
21 State or throw in federal money as well, is this type  
22 of gap typical for the Colville School District year  
23 after year after year?

24 A. Yes. Yes. --

25 Q. This is 2007-2008 year that we are using?

1       A.   That is unique, no.

2       Q.   Is this situation of the gap here, is that  
3   trending in any direction, getting better or worse --  
4   I am sorry, getting higher or lower?

5       A.   Well, the gap gets worse because the amount  
6   that I have to operate the School District gets less  
7   and less.  So I have to try to raise the levy more and  
8   more.  That is difficult.

9       Q.   I would like to put in front of you Exhibit  
10   144, please.  Do you have Exhibit 144 in front of you?

11      A.   Yes.

12      Q.   You also previously talked about this quote  
13   that you were referring to from Exhibit 2; do you see  
14   that?

15      A.   Right.

16      Q.   I am going to ask you some questions about the  
17   level of resources that this \$18.9 million figure  
18   provides.  All right.

19      A.   All right.

20      Q.   With the level of resources that that \$18.9  
21   million figure provides, can your district equip all  
22   children residing within your district with the  
23   knowledge and the skills that are specified in the  
24   State's Essential Academic Learning Requirements?

25      A.   No.

1       Q. With that level of resources can you equip all  
2 children residing within your district with the  
3 knowledge and the skills identified in those four  
4 numbered provisions of House Bill 1209?

5       A. No.

6       Q. With that level refer sources can you equip all  
7 of the children residing within your district with the  
8 knowledge and the skills described in Exhibit 2?

9       A. In this? No.

10      Q. Your pointing to "this," you are point to go  
11 Exhibit 2?

12      A. This paragraph from the Supreme Court decision,  
13 no.

14      Q. With that level of resources, can your district  
15 provide all children residing within your district a  
16 realistic or effective opportunity to learn the  
17 knowledge and the skills in the State's Essential  
18 Academic Learning Requirements?

19      A. No.

20      Q. With that level refer sources can you provide  
21 all children residing within your district a realistic  
22 or effective opportunity to learn the knowledge and  
23 the skills identified in those four paragraphs of  
24 House Bill 1209?

25      A. No.

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1       Q. With that level of resources, can you provide  
2 all children residing within your district a realistic  
3 or effective opportunity to learn the knowledge and  
4 the skills that are described in Exhibit 2?

5       A. No.

6       Q. If I were to ask you the same question with  
7 respect to the level of resources that the \$19.4  
8 million figure provides, would the answers be the  
9 same?

10      A. Yes.

11      Q. If I were to ask you the same questions with  
12 respect to the level of resources that the \$16.8  
13 million figure provides, would your answer be the  
14 same?

15      A. Yes.

16      Q. If I were to ask you the same questions with  
17 respect to the \$15.3 million figure and the resources  
18 that that provides, would your answer be the same?

19      A. Yes.

20      Q. I would like to ask you some questions about --  
21 actually, if I could put in front of you Exhibit 649,  
22 please -- I am sorry, it is 651.

23               MR. AHEARNE: I am sorry, your Honor.

24      Q. Looking at the \$12.7 million figure that comes  
25 from the State Program Funding Formula, do you see

1     that?

2           A.   Yes.

3           Q.   Does the level of resources of that \$12.7  
4     million provide -- strike that.

5           Can your district equip all children residing  
6     within your district with the knowledge and the skills  
7     specified in the State Essential Academic Learning  
8     Requirements with the level of resource that is \$12.7  
9     million provides?

10          A.   No.

11          Q.   Does that \$12.7 million provide your district  
12     the level of resources that allows them to equip all  
13     children residing within your district with the  
14     knowledge and the skills identified in the four  
15     paragraphs of House Bill 1209?

16          A.   No.

17          Q.   With that level refer sources can your district  
18     equip all children residing in your district with the  
19     knowledge and the skills described in exhibit 2?

20          A.   No.

21          Q.   With that level of resources can your district  
22     provide all children residing in your district a  
23     realistic or effective opportunity to learn the  
24     knowledge and the skills specified in the State  
25     Essential Academic Learning Requirements?

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1       A.   No.

2       Q.   With that level of resources can your district  
3   provide all children residing within your district a  
4   realistic or effective opportunity to learn the  
5   knowledge and the skills identified in the four  
6   paragraphs of House Bill 1209?

7       A.   No.

8       Q.   With that level of resources can your district  
9   provide all children residing within your district a  
10   realistic or effective opportunity to learn the  
11   knowledge and the skills described in Exhibit 2?

12      A.   No.

13      Q.   On the Program Funding Formulas that we talked  
14   about that produces the \$12.7 million amount, in your  
15   experience, do they correlate with what it actually  
16   costs to operate your School District?

17      A.   No, they don't correlate at all.

18      Q.   In your experience, do they correlate with what  
19   would actually cost to provide all children residing  
20   within your district the basic knowledge and skills  
21   that are specified in either the Essential Academic  
22   Learning Requirements, or those four numbered  
23   provisions of 1209, or in Trial Exhibit 2?

24      A.   No.   They don't correlate at all.

25      Q.   Do they correlate at all with what it would



1 actually cost to provide the students in your district  
2 a realistic or effective opportunity to learn the  
3 knowledge and the skills that are specified in the  
4 Essential Academic Learning Requirements, or those  
5 four numbered paragraphs of House Bill 1209, or, the  
6 Exhibit 2?

7 A. No, there is no correlation.

8 Q. Why do you say that?

9 A. Those are formulas based on the numbers of  
10 kids, the numbers of teachers.

11 They are formulas based on how long the student  
12 is sitting in the classroom and how many days a  
13 student is sitting in the classroom, those are  
14 accounting process.

15 Those have nothing to do with knowledge and the  
16 skills and learning and they have nothing to do with  
17 that.

18 They are just a way -- they are a way for people  
19 to do accounting.

20 Q. Does your district heavily rely on local levies  
21 to operate?

22 A. Yes, it is a lifeline for us.

23 Q. Does your district heavily rely on local levies  
24 for the teaching of the knowledge and the skills that  
25 are in Essential Academic Learning Requirements?

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1       A.   Yes.

2       Q.   Would the answer be the same with respect to  
3   teaching the knowledge and the skills in the four  
4   numbered paragraphs of House Bill 1209?

5       A.   Yes.

6       Q.   Does your district heavily rely on the local  
7   levies for the teaching of the knowledge of the skills  
8   that are described in Exhibit 2?

9       A.   Yes.

10      Q.   Even with the local levy funding and other  
11   sources that your district is able to put together  
12   year-to-year, is your district equipping all children  
13   with the knowledge and the skills and that is  
14   specified in the Academic Learning Requirements?

15      A.   No.

16      Q.   Is your district providing all students  
17   residing in your district with the knowledge and the  
18   skills identified in those four paragraphs of House  
19   Bill 1209?

20      A.   No.

21      Q.   Does your district providing all children  
22   residing within your district with the knowledge and  
23   the skills that are described in exhibit 2?

24      A.   No.

25      Q.   Even with those the local levies and the other

1 sources that your district is able to put together, is  
2 your district providing all children residing within  
3 your district, a realistic or effective opportunity to  
4 learn the knowledge and the skills that are specified  
5 in the State's Essential Academic Learning  
6 Requirements?

7 A. No.

8 Q. Is it providing them all of the realistic or  
9 effective opportunity to learn the knowledge and the  
10 skills specified in those four numbered paragraphs of  
11 House Bill 1209?

12 A. No.

13 Q. Even with the local levies and other sources  
14 that your district is able to put together year after  
15 year, is your district able to provide all students  
16 residing within the district a realistic or effective  
17 opportunity to learn the knowledge and the skills  
18 described in Exhibit 2?

19 A. No.

20 Q. Why not?

21 A. Well, it is tons of reasons why not. We have a  
22 really experienced staff. We have an -- our teaching  
23 staff is really experienced, which you would think is  
24 a really a great thing.

25 It is as far as consistency. We have great

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1 consistency in our teaching staff. The average number  
2 of years that our teachers have been in Colville are  
3 about 20, 20 years, same as mine.

4 The problem with that, is that the last time  
5 that any of our teachers were in formal education is  
6 21 years ago, a lot has changed in 21 years, there is  
7 lots of things out there happening.

8 The only dollars that we have that we can have  
9 that we can figure out a way to educate the staff and  
10 keep them current is levy money in our community, if  
11 you put any money towards any adult that is going to  
12 fail.

13 So we scrape and find and finagle and figure out  
14 ways to try to keep our teachers up-to-date. But  
15 staff development is a huge, huge part of this.

16 House Bill 1209 gave us 10 days for staff  
17 development.

18 Q. What do you mean by 10 days?

19 A. 10 days for staff development.

20 House Bill 1209, you will have 10 days for staff  
21 development. Guess what? They funded three. Then  
22 they took one way away and then they took another one  
23 away. Now we have one day for staff development for  
24 120 teachers to get up to speed. That is ridiculous.  
25 That's not going to happen.

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1           That is a huge resource that we do not have in  
2   order to answer all of the -- I mean, you are letting  
3   your questions beat the crud out of our School  
4   District.

5           No. No. No. No. No. We can't. We can't.  
6   We can't. We can't. We don't. We don't. We don't.  
7   I don't know what to do about it.

8           I have no money to educate my staff to bring  
9   them up to speed.

10          I have any money that I have, every single one  
11   of our building budgets is levy money. There is no  
12   building budget out of what the State gives us; none.

13          I know that they account for little bit, a  
14   little amount of money there for -- well, here is an  
15   example. They account for curriculum. There is a  
16   spot in there for curriculum upgrades.

17          Well, look at our math books. How long has it  
18   been since we upgraded our math books, 18 years? That  
19   is crazy.

20          Q. Why don't you just use the State money to  
21   update your math books on a more regular schedule than  
22   18 years?

23          A. Because new math books aren't legally required  
24   by the State. If they were, we would be, you know,  
25   cutting something else. But they are not required by

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1 the State, but data for the State is required.  
2 Insurance is required. All of those other things are  
3 required. The amount to pay your teachers is  
4 required.

5 It would be nice if the State gave us \$100,000  
6 that they are shorting us on the teachers to use that  
7 to buy math books. That would be great. But it is  
8 not there.

9 You know, there is curriculum materials that we  
10 could buy. It would be great to get microscopes in  
11 aren't 1950 out of the -- you know, out of the 50s,  
12 you know, somewhere in there, you know.

13 Out of the kids' hands in the Elementary School,  
14 and using the stuff that we have, but, you know we  
15 have out-dated materials and out dated equipment. You  
16 know, I think that we are doing well. But the fact of  
17 the matter is how many, what percentage of our kids  
18 didn't pass the science WASL? 50 some?

19 The fact is that I have six schools -- or five  
20 schools that are all in AYP. They are all in the  
21 program. How is that good?

22 Every year I can't count on whether I have  
23 full-time kindergarten. I can't count on that,  
24 because I don't know what the stable funding source to  
25 put it on any more.

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1           It was 728. It wasn't a levy. There is no  
2 other funding source to put it on.

3           I can't count on our athletic programs which  
4 are. I have to tell you, are crucial in the  
5 community. Athletics is crucial and the athletics are  
6 crucial in our community.

7       Q. Crucial to what?

8       A. Crucial to the success of our children.  
9 Crucial to keeping them in the school, keeping them to  
10 moving forward in life. I can't count on that.

11           You know, so are we able to do those things, no,  
12 we are not able to do those things.

13       Q. With the other things that you described,  
14 through the course of your testimony today and  
15 yesterday the other reasons as well?

16       A. Yes. Those all of those are reasons why we  
17 can't, you know, meet all of the those things that you  
18 mentioned.

19       Q. When you said, just so that the record is  
20 clear, shortening 100,000 on your teachers, were you,  
21 was that a reference to the --

22       A. -- the formula.

23       Q. -- the number of teachers that the State  
24 funding program pays for?

25       A. No, not the number, the way that they figure

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1 the percentage.

2 Q. I want to make sure that the record is clear.  
3 Is that 100,000 number that you are talking about was  
4 that for all of the teachers in the district, or the  
5 teachers that the teachers that the funding formula  
6 program covers?

7 A. Number one, the regular State basic education,  
8 the State teachers.

9 Q. The ones in the program?

10 A. The ones that are funded by the State, yes.

11 Q. But that was not including the ones that are  
12 funded by the other monies?

13 A. No.

14 That is another thing. Every time that our  
15 State passes, I am not anti-raise for our teachers,  
16 don't get me wrong. I think that they work hard and  
17 deserve what they get.

18 But every time that the State passes a raise for  
19 our teachers, all of our teachers get it, even the  
20 ones that are not funded by the State.

21 Q. Who pays for that?

22 A. We -- the district does.

23 Q. Hopefully, I am getting to the end here. Do  
24 you know, have you ever heard of something called  
25 House Bill 2261?



1       A.   Yes.

2       Q.   Does 2261 provide any funding for education for  
3   your district, this coming year?

4       A.   No.

5       Q.   Does it provide any funding for education for  
6   your district in any year?

7       A.   No.

8       Q.   What -- as a superintendent of the Colville  
9   School District, what does 2261 provide for?

10      A.   It is rhetoric, more words and more studies and  
11   more, you know, whatever else it is that is happening  
12   that puts off taking care of business that we need to  
13   take care of.

14      Q.   All right.

15               MR. AHEARNE: Your Honor, I was thinking,  
16   because I am very forgetful, I am told that I need to  
17   admit Exhibit 651, please.

18               THE COURT:   Exhibit 651 is offered.

19               MS. BASHAW: No objection.

20               THE COURT:   Exhibit 651 is admitted.

21               ( Exhibit No. 651 received in evidence.)

22

23               MR. AHEARNE: Because my notes are unclear,  
24   is Exhibit 646 is admitted already?

25               THE CLERK:   Yes, it has, your Honor.

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1 THE COURT: Exhibit 646 has been  
2 previously admitted.

3 MR. AHEARNE: Thank you, your Honor.

4 BY MR. AHEARNE:

5 Q. Mr. Emmil, how long have you spoken English?

6 A. Well, 46 years, 45 years probably.

7 Q. Are you saying that you are fluent in English?

8 A. Yes, I would say that I am fluent in English.

9 Q. To you, what does the word paramount means?

10 A. Paramount is more important than anything else.

11 Q. To you, what does the word ample mean?

12 A. Ample means --

13 MS. BASHAW: Again, your Honor, same  
14 objection that we registered before, calling for legal  
15 conclusions.

16 THE COURT: The objection is noted. It is  
17 overruled. I will give it the weight that it is due.

18 MS. BASHAW: Thank you.

19 A. Ample means more than enough.

20 Q. The phrase all children, what does all mean to  
21 you?

22 A. All, it is English. This is English, right?

23 All is all. I mean, I don't mean to be facetious. I  
24 know that we try to come up with lots of meanings in  
25 the courts for different words, but all is all.

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1           It is everything. All of them, all, in this  
2 case it is every kid, yes.

3           Q. How long have you been in Colville School  
4 Districts?

5           A. 20 years.

6           Q. How long have you been the superintendent of  
7 the Colville School District?

8           A. Five years.

9           Q. As a superintendent, what does the word  
10 education mean to you?

11          A. Education is the teaching and the learning of  
12 the knowledge and the skills that kids need to survive  
13 in our world, prosper.

14          Q. As the superintendent of Colville School  
15 District, do you believe that ample provision is being  
16 made for the education of all children residing within  
17 your district?

18          A. No.

19                   MR. AHEARNE: Thank you, your Honor. I have  
20 nothing else.

21                   THE COURT: Thank you, counsel.

22                   We will take the cross examination at this  
23 time, Ms. Bashaw.

24                   MS. BASHAW: Thank you, your Honor.

25                   CROSS EXAMINATION

1 BY MS. BASHAW:

2 Q. Good morning, Mr. Emmil.

3 A. Good morning.

4 Q. Hopefully, today, my math skills are a little  
5 better than they were yesterday. I can get more than  
6 27 years out of 1992.

7 A. All right.

8 MR. AHEARNE: Excuse me, Ms. Bashaw.

9 Your Honor, I also have another exhibit I  
10 didn't move to admit, Exhibit 422, the F-196.

11 MR. EMCH: Just checking, your Honor,  
12 whether that was admitted.

13 THE COURT: One moment, please. I don't  
14 have that, no.

15 THE CLERK: Yes, it has been admitted.

16 THE COURT: Exhibit 422 you have admitted?

17 THE CLERK: Yes, it was admitted yesterday.

18 THE COURT: It was previously admitted.

19 MR. AHEARNE: I am sorry, Ms. Bashaw.

20 MS. BASHAW: That is fine. Thank you.

21 BY MS. BASHAW:

22 Q. Could we turn to Exhibit 422, please, IF YOU  
23 could grab that binder.

24 A. I don't have it.

25 Q. Here it is.

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1       A.   Thank you.

2       Q.   I would like you to turn to page 3, the little  
3   3, which would be the big number 4 up at the top  
4   right-hand corner.

5           Do you have that page?

6       A.   Yes.

7       Q.   You understand that this page IS to be your  
8   over-all statement of revenues and expenditures;  
9   correct?

10      A.   Yes.

11      Q.   So if we were to take those numbers and looking  
12   down the general fund column, do you see that?

13      A.   Yes.

14      Q.   The general fund column is where all of the  
15   funds go, basically, to run the operations of your  
16   School District, except for the things that go to the  
17   columns to the right; correct?

18      A.   The general -- let me see if I have this  
19   correct.  The general fund is to run the School  
20   District?

21      Q.   Except for the items that are listed to the  
22   right, the general fund is what you use to pay for  
23   everything else; right?

24      A.   Yes.

25      Q.   So in that column, it looks to me like you had

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1 1.4 million in local revenues?

2 A. Yes.

3 Q. That would be your levy money?

4 A. Yes.

5 Q. Then you have 15.3 in State funds; right?

6 A. Right, under "General Fund," yes.

7 Q. Then the Feds, the federal government gave you

8 1.4 million.

9 A. All right.

10 Q. Then there is an other, for which you have

11 \$10,000 and some change?

12 A. Right.

13 Q. What generally makes up the other?

14 A. I think that we have the game range, I think  
15 pays us for a shed that they rent and there is, what  
16 is it -- there is a, it could be somebody donated a  
17 van, an old van worth \$500 people donate stuff.

18 Q. Miscellaneous?

19 A. Yes; or somebody -- the church is renting the  
20 house school for the weekend to, you know, so we  
21 charge them, if it is not kid-related.

22 We will charge them a small, you know, fee, to  
23 rent it and stuff like that.

24 Q. All right.

25 So fortunately, I don't have to do much math, it

1 looks like it is added up there for us, \$18.196  
2 million in revenues?

3 A. Yes.

4 Q. Then below that, initial revenue box are your  
5 expenditures under the general fund; correct?

6 A. Correct.

7 Q. All right. It totals down there at the bottom  
8 at 18.348 million in expenditures; correct?

9 A. Yes.

10 Q. So that the difference is 152,000?

11 A. Yes; so it is minus 152,000.

12 Q. I have the minus?

13 A. All right; sorry.

14 Q. So it is not the difference between 19.4  
15 million and the 16.8; isn't that correct?

16 It is \$152,000 difference?

17 A. I don't know what this other side has to do  
18 with that. We talked about my expenditures. That is  
19 true. That is my expenditures.

20 Q. The general fund column are your expenditures,  
21 your revenues and your expenditures for all of your  
22 programs, except for the ones listed to the right of  
23 that column?

24 A. Yes, my expenditures, yes. So I expended  
25 \$152,000 more than I get.

1 Q. That is right; that is what that would say?

2 A. Right.

3 Q. All right.

4 Now, if you could turn to page 26 of the Exhibit  
5 422, again, up at the top right-hand corner would be  
6 page 43?

7 A. All right.

8 Q. Now, this is just a spreadsheet that identifies  
9 your resource program expenditures; correct?

10 A. Yes, resources, yes.

11 Q. If we look at the under "Program Expenditures,"  
12 under the basic education program, section on the  
13 left-hand side, do you see that upper area, the  
14 program codes 01314597; do you see that?

15 A. Yes.

16 Q. I notice that the code 97, district-wide  
17 support; do you see that?

18 A. Yes, district-wide support.

19 Q. What is district-wide support? Is that your  
20 office?

21 A. That is District-wide support is everything  
22 else that happens within the district that makes the  
23 classroom operate.

24 Q. All right.

25 So the money that you spend under that program



1 for District-wide support, was 2.4 million and some  
2 change; right?

3 A. Yes.

4 Q. Then going under the "State Resources" column,  
5 it looks like the State provided you 100 percent  
6 revenue, compared to the money that you spent in that  
7 column?

8 A. Under "State Resources," it is expenditures  
9 and resources, yes.

10 Q. Then if we go down to under "Other  
11 Instructional Programs," the very first one there, "21  
12 Special Ed, Supplemental"?

13 A. Yes.

14 Q. You spent for this particular period, is this  
15 the 2007-2008 school year?

16 A. 422, let me go back to the beginning and let me  
17 see, it is 2007-2008.

18 Q. Under the 2007-2008 Special Ed Supplemental  
19 State Program you spent 1.2 million; right?

20 A. 1.279, yes.

21 Q. Again, the State provided you all of the money  
22 that you spent under that program?

23 A. Yes.

24 Q. If we go down a little further to line 55, the  
25 Learning Assistance Program, do you see that?

1 A. Yes.

2 Q. What is that?

3 A. That is what we call LAP, learning assistance  
4 State disadvantaged.

5 Q. Is that different the Special Ed?

6 A. Yes.

7 Q. How is the student different between the  
8 Special Ed student?

9 A. They -- the State has different requirements  
10 for how you determine a LAP student and a Special Ed  
11 student.

12 Q. But they are not the same student?

13 A. No, they are not the same student.

14 Q. It looks like for the Learning Assistance  
15 Program you spend 181,000 and some change?

16 A. Yes.

17 Q. Again, the State paid you 181,000 and some  
18 change?

19 A. Yes.

20 Q. If we go down to code 65, the transitional  
21 bilingual -- do you see that?

22 A. Yes.

23 Q. It looks like you spend 67, almost 68,000?

24 A. Yes.

25 Q. Again, the State provided you with almost

1     \$68,000?

2           A.   Yes.

3           Q.   If you go down under "Professional Development  
4   Code 75" -- do you see that?

5           A.   "Professional Development, yes, State.

6           Q.   Is that for your teaching staff and whatever  
7   professional development that you do in your district;  
8   right?

9           A.   Yes.

10          Q.   And you spend \$3,902?

11          A.   Yes.

12          Q.   And the State gave you \$3,902?

13          A.   Yes.

14          Q.   Now, I would like to look at another document  
15   that kind of gives us an idea of the money that you  
16   spend.  If we could find Exhibit 689 --

17          A.   I don't have that.

18          Q.   All right.

19                I will get it for you.  Look at tab 5 on Exhibit  
20   689.  This is the report card for Colville School  
21   District for the 2008-2009 school year?

22          A.   Yes.

23          Q.   The information that is on the report card, the  
24   right-hand column of the student demographics, the  
25   teacher information, the financial data, the

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1 right-hand side of the column, that is all information  
2 that the district provides to OSPI; correct?

3 A. Yes.

4 Q. On the left-hand side the WASL scores and data  
5 that is all information that the testing company  
6 provides to OSPI?

7 A. I am not sure where they get it, but, yes, that  
8 is State information.

9 Q. If you go down to the bottom of the right-hand  
10 side under the financial data, for the 2007-2008  
11 period --

12 A. Yes.

13 Q. -- it indicates that per student your total  
14 revenues was \$8,362 per student?

15 A. Yes.

16 Q. Of that \$8,362 the State provided \$7,013;  
17 right?

18 A. That is what it says.

19 Q. 84 percent?

20 A. Yes.

21 Q. If you flip to the next page -- are you there?

22 A. Yes, sorry.

23 Q. The next page, again, going down that column,  
24 for the federal money that you received was \$654, or 8  
25 percent; right?

1       A.   That is what it says, yes.

2       Q.   Then the local monies was \$665 and also 8  
3   percent; right?

4       A.   Yes.

5       Q.   Other sources, was \$30 --

6       A.   Ah-hum.

7       Q.   -- per student; correct?

8       A.   Yes.

9       Q.   Let's see if I happen to take out what I need  
10   here.

11               MS. BASHAW: Your Honor, perhaps this might  
12   be a good time to take our morning break, so I can  
13   find my documents.

14               THE COURT:   All right.

15               Why don't we take a 20-minute recess until  
16   10:45 a.m.

17               Mr. Emmil, I will ask you to let  
18   Mr. Ahearne know if you need additional time.

19               THE WITNESS:   All right.

20               THE COURT:   Mr. Ahearne, if you could let  
21   the court clerk know at 10:45, if additional time is  
22   needed.

23               She will then communicate that to me in  
24   chambers.   Otherwise, we will resume with the  
25   Mr. Emmil's cross examination at 10:45 a.m.

Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,

1 MR. AHEARNE: Thank you. Your Honor.

2 THE COURT: All right. We will be in  
3 recess.

4 THE CLERK: All rise. Court is in recess.

5 (Court was recessed.)

6 (Cynthia Kennedy takes over in this part of  
7 the morning session.)

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Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,

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## I N D E X

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## W I T N E S S E S

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KENNETH EMMIL

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DIRECT EXAMINATION BY MR. AHEARNE

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CROSS EXAMINATION BY MS. BASHAW

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## E X H I B I T S

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Exhibit No. 651 received in evidence

788

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## 1 C E R T I F I C A T E

2 REPORTER'S CERTIFICATE

3 STATE OF WASHINGTON)

4 SS:

5 COUNTY OF KING )

6 I, DOLORES A. RAWLINS, an official reporter of  
7 the State of Washington, was appointed an official  
8 court reporter in the Superior Court of the State of  
9 Washington, County of King, on January 15, 1987, do  
10 hereby certify that the foregoing proceedings were  
11 reported by me in stenotype at the time and place  
12 herein set forth and were thereafter transcribed by  
13 computer-aided transcription under my supervision and  
14 that the same is a true and correct transcription of  
15 my stenotype notes so taken.

16 I further certify that I am not employed by,  
17 related to, nor of counsel for any of the parties  
18 named herein, nor otherwise interested in the outcome  
19 of this action.

20 Dated: September 3, 2009

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24 DOLORES A. RAWLINS, RPR, CRR, CCR

25 King County Superior Court, Seattle, WA

Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,